

SENATE BILL REPORT

ESSB 5158

As Amended by House, April 14, 2015

Title: An act relating to requiring call location information to be provided to law enforcement responding to an emergency.

Brief Description: Requiring call location information to be provided to law enforcement responding to an emergency.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators McCoy and Fraser).

Brief History:

Committee Activity: Law & Justice: 1/26/15, 2/09/15 [DPS-WM].

Ways & Means: 2/12/15 [w/oRec].

Passed Senate: 3/03/15, 48-0.

Passed House: 4/14/15, 97-0.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5158 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

Staff: Tim Ford (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That it be referred without recommendation.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Bailey, Billig, Brown, Conway, Fraser, Hasegawa, Hatfield, Hewitt, Kohl-Welles, O'Ban, Padden, Parlette, Rolfes, Schoesler and Warnick.

Staff: Julie Murray (786-7711)

Background: In 2007 a young woman named Kelsey Smith died after being kidnapped; she had a cell phone that might have revealed her location in time for emergency response, but

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law enforcement was unable to obtain her cell phone's location from the telecommunications service provider until more than three days had elapsed. Ms. Smith's family has established a foundation in her name that works to pass state laws to provide law enforcement with a way to quickly ascertain the location of a wireless telecommunications device if a person has been determined, by law enforcement, to be at risk of death or serious physical harm due to being kidnapped or missing.

Federal law prohibits providers of electronic communication services to the public from knowingly divulging records or other information pertaining to a customer, except under specific circumstances, such as pursuant to a warrant. Another circumstance in which providers are authorized to disclose records or information pertaining to customers is disclosure to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure, without delay, of information relating to the emergency. A number of states have enacted laws to regulate or encourage the disclosure by providers of cell phone location information.

The Fourth Amendment of the United States Constitution and Article I, section 7 of the state Constitution prohibits the government from conducting a warrantless search, unless an exception applies. Two exceptions from the warrant requirement that the court recognizes are when a party consents to the search and when disclosure is necessary without waiting for a court order, due to exigent circumstances such as an emergency involving immediate danger of death or serious bodily injury. Although some federal court decisions have held that the government does not need a warrant under the Fourth Amendment to obtain cell phone location data, the analysis under the state Constitution may be different. Currently Washington prosecuting attorneys advise law enforcement to obtain search warrants before requesting cell phone location data from service providers.

Summary of Engrossed Substitute Bill: Wireless telecommunications providers must provide call location information for the telecommunications device of a user when requested by a law enforcement agency responding to an emergency involving risk of death or serious physical harm. Law enforcement agencies may not request this information for any other purpose. Law enforcement agencies must check with the FBI crime information center, and any other databases to determine if the person requesting the information has a history of domestic violence or stalking, or a court order restricting contact, or if either the person requesting the information or the person for whom the call location information is being requested is participating in the address confidentiality program. Law enforcement agencies may not provide call location information to any person where there is a reasonable belief that the person has a history of domestic violence or stalking, or there is a court order restricting contact, or the person is participating in the address confidentiality program, unless pursuant to a court order. No cause of action may be brought in any court against wireless telecommunications providers for providing call location information while acting in good faith and in accordance with this act.

All wireless telecommunications providers registered to do business in Washington and all resellers of wireless telecommunications services must submit emergency contact information to the Washington State Patrol (WSP), and submit new information immediately if there is any change. WSP must maintain a database with emergency contact information for all of the wireless telecommunications providers and make the information immediately

available upon a request from law enforcement. WSP may adopt rules as needed to fulfill the requirements of this act.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Law & Justice): PRO: This bill was introduced three years ago and is in response to the Kelsey Smith kidnapping and death. Law enforcement might be able to save someone's life if they are able to obtain their cell phone location information quickly from the telecommunications providers. The language may need to be amended to meet the requests of the domestic violence victim advocates and that is a friendly amendment. Law enforcement should be able to obtain information about someone being a domestic violence or stalking victim from any person and not just the two sources listed in the bill. Law enforcement should also be able to obtain the call location information with a warrant but the bill doesn't include that option.

Persons Testifying (Law & Justice): PRO: Senator McCoy, prime sponsor; Rob Huss, WA State Patrol; Grace Huang, WA State Coalition Against Domestic Violence; James McMahan, WA Assn. of Sheriffs and Police Chiefs.

Staff Summary of Public Testimony (Ways & Means): No public hearing was held.

Persons Testifying (Ways & Means): N/A.

House Amendment(s): Requires that the law enforcement officer making a request for call location information be on duty during the course of official duties at the time of the request. The law enforcement agency must verify there is no relationship or conflict of interest between the law enforcement officer responding, investigating or making the request, and either the person requesting the call location information or the person for whom the call location information is being requested. Prohibits law enforcement from distributing cell phone information to any other party, except to first responders responding to the emergency situation.